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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,074	09/26/2003	Randall Heath	043850.016	2926
25461 7590 06/29/2009 SMITH, GAMBRELL & RUSSELL SUITE 3100, PROMENADE II 1230 PEACHTREE STREET, N.E. ATLANTA, GA 30309-3592				
EXAMINER				
SAFAVI, MICHAEL				
ART UNIT		PAPER NUMBER		
3637				
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06/29/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Box 5: Contd. The response of June 12, 2009 serves to overcome the rejection of claims 1-10 bases on a defective reissue declaration under 35 U.S.C 251.

Box 5: Contd. Applicant's arguments filed June 12, 2009 have been fully considered but they are not persuasive. Reissue claims broader in scope in an area directed to amendment made to overcome an art rejection in the original prosecution while retaining, in broadened form, the limitation(s) added to overcome the art rejection in the original prosecution are subject to recapture, M.P.E.P. 1402.02(I)(C)(2)(d).

In this case, the limitation found within subparagraphs (a)(b)(c) were originally claimed in the application, (as claim 1), and was amended in reply to an art rejection to add the limitation found in subparagraph (d) in patented claim 10 and thus provide the combination of subparagraphs (a)(b)(c)(d) (after which the patent issued). A reissue application is then filed, and the reissue application claim 10 is directed to the combination of subparagraphs (a)(b)(c)(d)_{broadened}, (actually directed to (a)(b)(c)_{broadened}(d)_{broadened}). The (a)(b)(c)_{broadened}(d)_{broadened} claims are narrowed in scope when compared with the canceled claim subject matter (a)(b)(c), because of the addition of (d)_{broadened}. Thus, the claims retain, in broadened form, the limitation argued/added to overcome art rejection in original prosecution. In this instance, a recapture rejection is being made even though The (a)(b)(c)_{broadened}(d)_{broadened} is narrower than canceled claim subject matter (a)(b)(c), because the surrender-generating limitation (d) has been broadened, i.e., there is broadening in an area related to the surrender.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Fri., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Safavi/
Primary Examiner, Art Unit 3637

M. Safavi
June 22, 2009